Filed 1/14/19 Marriage of Tsatryan CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re the Marriage of ARTHUR and POLINA TSATRYAN.	B281633 (Los Angeles County Super. Ct. No. BD512645)
ARTHUR TSATRYAN, Appellant, v. POLINA TSATRYAN, Respondent.	

APPEAL from an order of the Superior Court of Los Angeles County, Shelley Kaufman, Judge. Affirmed.

Arthur Tsatryan, in pro. per., for Appellant.

No appearance for Respondent.

INTRODUCTION

This is the 10th appeal by Arthur Tsatryan[1] in this marital dissolution action. On May 21, 2015 the trial court entered a judgment of dissolution of Arthur and Polina's marriage. Among the issues resolved by the judgment were the custody, visitation, and support of the parties' minor son, Alexander. We affirmed the judgment. (*In re Marriage of Tsatryan* (Feb. 13, 2018, B265467) [nonpub. opn.].)

Arthur now appeals from a postjudgment order denying his request for modification of custody. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND[2]

A. *Background and Custody Trial*

Arthur and Polina were married on August 5, 1987. They separated on August 3, 2009, and Arthur filed a petition for dissolution of marriage on September 23, 2009. At the time

---

[1] As with our previous opinions in this matter, we refer to Arthur and Polina Tsatryan by their first names for the sake of convenience and clarity, intending no disrespect.

[2] In our discussion of the factual and procedural background of the case, we focus on the proceedings relevant to this appeal. We discuss the earlier proceedings leading up to the judgment of dissolution in *In re Marriage of Tsatryan* (Nov. 9, 2016, B262680) (nonpub. opn.). Our discussion below of the trial court's custody orders, including the final custody order in the judgment of dissolution, are also taken from our earlier opinion in *In re Marriage of Tsatryan, supra*, B262680.

Arthur filed the petition for dissolution, Alexander was a minor.[3] (*In re Marriage of Tsatryan, supra*, B265467.)

On September 6, 2011 the trial court granted Arthur and Polina joint legal custody over Alexander. Polina retained primary physical custody, with visitation for Arthur on alternate weekends. On August 29, 2012 the trial court modified the custody order, giving each parent alternate weeks with Alexander. In 2013 Arthur requested modification of child custody and support, seeking legal and physical custody of Alexander, with Polina having visitation on alternate weekends. The trial court denied the motion. Arthur appealed, and we dismissed the appeal as a nonappealable order. (*In re Marriage of Tsatryan* (Sep. 15, 2014, B247448) [nonpub. opn.].)

Acrimonious litigation ensued, including disputes over Alexander's custody, education, and extracurricular activities. On October 24, 2014 the trial court awarded sole legal custody of Alexander to Polina with respect to education and extracurricular activities. On November 10, 2014 Alexander's attorney filed a request for modification of child custody and visitation, seeking to limit Arthur's visitation to six hours of monitored visitation a week. Alexander's attorney stated Arthur made unilateral decisions, failed to return Alexander to Polina following his visits, and refused to allow Alexander's attorney to talk with Alexander. On January 5, 2015 the trial court granted the request, finding Arthur was "directly interfering with [Polina's] visitation time with minor Alexander." The trial court awarded sole legal custody to Polina pending the custody trial.

---

[3] Alexander was born on January 19, 2001, and will turn 18 on January 19, 2019.

A three-day trial on custody issues commenced on February 2, 2015, at which Arthur, Polina, and Alexander testified. Arthur testified Alexander told him he was scared of Polina and that she had hit him; Polina refused to allow Alexander to participate in extracurricular activities; she left Alexander in the care of others; and she prevented Alexander from visiting with Arthur. In response to an inquiry from the trial court, Arthur stated he would not follow a 50/50 custodial plan because he could not communicate with Polina and his health was deteriorating because of the shared custody order. Arthur requested the trial court award sole physical custody to himself or Polina, with no or limited visitation for the other parent.

Polina acknowledged in her testimony she worked full time and had arranged for others to transport Alexander after school to his many extracurricular activities. In response to questioning by Arthur, Polina testified about a restraining order entered against her six years earlier. She stated she did not think she and Arthur could make joint decisions about Alexander.

Alexander testified he preferred to live with Arthur because Polina was not taking him to extracurricular activities and she did not pay sufficient attention to him. When questioned by Arthur, Alexander stated the custody battle was so stressful that he would prefer to live with his father than for his parents to share custody. On questioning from Polina, however, Alexander acknowledged Arthur had discussed the case with him. Arthur told Alexander shared custody was too "frustrating" and that, if the court did not award Arthur sole custody, he would not be as involved in Alexander's life.

Alexander's attorney recommended the trial court grant Polina sole legal and physical custody of Alexander, with visitation for Arthur, because Polina tried to resolve conflicts between her and Arthur in a child-centric manner, but Arthur created conflict.

At the conclusion of the trial, the trial court awarded Polina sole legal and physical custody of Alexander, with Arthur having visitation on the first and third weekends of each month and the parents to divide the holidays and school breaks. The trial court conceded that in theory "the best interest of Alex would be a 50/50 week-on, week-off order, where both [parents] would then go to counseling." However, because of the antagonism between the parents, Arthur's controlling nature, and his testimony that his deteriorating health could not withstand the stress of shared custody, the trial court concluded the 50/50 plan was neither possible nor in Alexander's best interest.

Although the trial court acknowledged Polina's faults and the challenges she would face balancing her work and Alexander's numerous after-school activities, the trial court concluded the custody plan was in the best interest of Alexander. (*In re Marriage of Tsatryan*, *supra*, B262680.) Arthur appealed, and we affirmed. We concluded the trial court had a reasonable basis for its child custody order and did not abuse its discretion in awarding Polina sole custody, with visitation for Arthur. (*In re Marriage of Tsatryan*, *supra*, B262680.)

On May 21, 2015 the trial court[4] entered a judgment of dissolution awarding Polina legal and physical custody of

---

[4] Judge Mark A. Juhas presided over the custody trial and signed the judgment.

Alexander with weekend visitation for Arthur. As part of the judgment, the trial court ordered Arthur to pay $507 per month in child support retroactive to the January 2015 custody order. Arthur appealed the judgment, and we affirmed. (*In re Marriage of Tsatryan, supra*, B265467.)

B. *Arthur's Request for a Change in Child Custody, Child Support, and Visitation*

On December 19, 2016 Arthur filed a request for a change in child custody, child support, and visitation, set for hearing on February 7, 2017. Arthur based his request on Polina's alleged failure to allow Alexander to visit with Arthur since May 1, 2015. In support of his request, Arthur submitted text messages from Alexander. In a February 25, 2016 text message, Alexander stated "yes" in response to Arthur's question, "Is it still the case, your mom doesn't let you . . . associate with me and my family?" On March 1, 2016 Alexander sent Arthur a text message stating, "last time I asked[, Polina] tried to make it clear that I cannot be near you or something like that." On June 20, October 13, and November 10, 2016 Alexander sent similar texts to Arthur. Arthur also complained that Alexander's grades had slipped from straight "A's" to "C's," based on a recent report card reflecting three "A's," a "B," and two "C's." Arthur also complained Alexander was not participating in extracurricular sports.

Arthur argued there was a change in circumstances, and sought full legal and physical custody of Alexander or, in the alternative, joint legal and physical custody. He requested a change in the trial court's child support order, but did not provide any basis for his request. Arthur also filed a request for a statement of decision.

On January 9, 2017 Polina filed an income and expense declaration. She also filed a responsive declaration, opposing a change in the custody order and requesting the trial court increase the child support Arthur paid to her based on Arthur's change in financial condition. Polina pointed to an April 30, 2015 order entered prior to the final judgment, in which the trial court granted Polina's request to suspend all visitation by Arthur "until further order of the Court." (Boldface omitted.) Polina challenged Arthur's claim that Alexander's grades were slipping, submitting a January 4, 2017 transcript showing Alexander's weighted grade point average was 4.0.

Arthur filed objections to Polina's responsive declaration and evidence on January 31, 2017.[5] He also filed a responsive declaration asserting additional arguments for a change in custody and support.

C. *The February 7, 2017 Hearing*

At the February 7, 2017 hearing, Arthur argued, "[F]or two years, I haven't seen my son per the judgment, and the judgment is a lawful order." The trial court confirmed the operative custody order was the May 21, 2015 judgment, not the April 30, 2015 order. However, it found Polina's failure to follow the judgment in reliance on the April 30, 2015 order was not a sufficient change in circumstances justifying the requested change in custody. Rather, there was "no indication from [the parties'] papers that anything has changed sufficiently, that the

---

[5] The trial court ruled on Arthur's objections, sustaining some and overruling others. The trial court sustained Arthur's objection to the transcript submitted by Polina as hearsay.

best interest[] of the child which was assessed at the time of trial is any different."

As to Arthur's claim that Alexander was not doing well in school, the trial court noted, "Both parties attached documents that aren't official transcripts. There's no credible evidence that he's not doing well in school." As to Arthur's claim that Alexander was not engaged in sports outside of school, the court found that even if this were true, there was no evidence that this would mean it was "no longer in his best interest[] to continue with the custody arrangement as ordered by the judgment." The trial court orally denied Arthur's request to change the child custody order as set forth in the judgment.

As to child support, the trial court noted Arthur failed to provide any information supporting a change in the amount. Arthur argued that Polina's income had increased from $75,000 to $130,000. But he did not provide to the trial court the calculations Judge Juhas had used in calculating child support after the custody trial.[6] The court took the request for a change in child support under submission. On March 15, 2017 the trial court issued a written ruling, denying Arthur's requests to modify the custody and child support orders. Arthur timely appealed from the denial of his request to modify child custody.[7]

---

[6] Arthur also did not provide the basis for his assertion that Polina's income was $130,000. Her income and expense declaration filed on January 9, 2017 stated her average monthly gross pay was $6,200, for an annual income of $74,400.

[7] Although Arthur requested a change in child custody, visitation, and child support, he has only appealed the denial of his "Request for Order for Modification of Child Custody." An appeal is limited to the order or judgment from which the party

DISCUSSION

"For purposes of an initial custody determination, [Family Code] section 3040, subdivision (b),[8] affords the trial court and the family '"the widest discretion to choose a parenting plan that is in the best interest of the child."'" (*In re Marriage of Brown & Yana* (2006) 37 Cal.4th 947, 955 (*Brown & Yana*); accord, *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255 (*Montenegro*).) "Once the trial court has entered a final or permanent custody order reflecting that a particular custodial arrangement is in the best interest of the child, 'the paramount need for continuity and stability in custody arrangements—and the harm that may result from disruption of established patterns of care and emotional bonds with the primary caretaker—weigh heavily in favor of maintaining' that custody arrangement. [Citation.] In recognition of this policy concern, we have articulated a variation

---

appeals. (*Ellis v. Ellis* (2015) 235 Cal.App.4th 837, 846 [appeal limited to judgment from which appellant appealed, not later judgment]; *Faunce v. Cate* (2013) 222 Cal.App.4th 166, 170 ["'Our jurisdiction on appeal is limited in scope to the notice of appeal and the judgment or order appealed from.'"].) We therefore only address the trial court's custody ruling. We also do not address Arthur's assertions that the trial court issued an "erroneous" decision in the May 21, 2015 judgment on child custody; the trial court erred in not ordering Arthur and Polina to participate in counseling; Polina made defamatory allegations of sexual abuse at a July 30, 2013 hearing; and there were erroneous custody and visitation orders prior to entry of the judgment.

8 All further references are to the Family Code unless otherwise indicated.

on the best interest standard, known as the changed circumstance rule, that the trial court must apply when a parent seeks modification of a final judicial custody determination." (*Brown & Yana*, at p. 956; accord, *Montenegro*, at p. 256.)

"Under the changed circumstance rule, custody modification is appropriate only if the parent seeking modification demonstrates 'a significant change of circumstances' indicating that a different custody arrangement would be in the child's best interest." (*Brown & Yana, supra*, 37 Cal.4th at p. 956; accord, *Montenegro*, at p. 256 [The trial court "'should preserve the established mode of custody unless some significant change in circumstances indicates that a different arrangement would be in the child's best interest.'"]; *Jane J. v. Superior Court* (2015) 237 Cal.App.4th 894, 902 ["the noncustodial parent seeking a change of the existing custody order . . . has the initial burden to make a substantial showing of changed circumstances affecting the children to change the final custody determination" of the trial court].)

We review custody and visitation orders under a "'deferential abuse of discretion test.'" (*Montenegro, supra*, 26 Cal.4th at p. 255; accord, *Ed H. v. Ashley C.* (2017) 14 Cal.App.5th 899, 904.) "Under this test, we must uphold the trial court 'ruling if it is correct on any basis, regardless of whether such basis was actually invoked.'" (*Montenegro*, at p. 255; accord, *Ed H.*, at p. 904.) """"The reviewing court should interfere only "'if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court's action, no judge could reasonably have made the order that he did.'""""" (*Ed H.*, at p. 904.)

Arthur points to authority in the context of a parent's request to relocate with a child where a custodial parent decides "'to relocate simply to frustrate the noncustodial parent's contact with the minor child[].' . . . '[E]ven if the custodial parent is otherwise "fit," such bad faith conduct may be relevant to a determination of what permanent custody arrangement is in the minor child[]'s best interest.'" (*Brown & Yana, supra*, 37 Cal.4th at p. 959, citation omitted; accord, *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 364 ["When parents share joint custody the trial court need not question the wisdom of a parent's move . . . , but should certainly consider evidence of bad faith by the moving party if such exists."]; *In re Marriage of Ciganovich* (1976) 61 Cal.App.3d 289, 294 (*Ciganovich*) ["a mother's sabotage of the father's visitation right . . . provide[s] a ground for a motion to modify the decree which the court should consider as part of the array of circumstances affecting custody and support"].)

In *Ciganovich*, relied on by Arthur, the trial court awarded custody to the mother with weekend visitation to the father as part of a dissolution decree. (*Ciganovich, supra*, 61 Cal.App.3d at p. 291.) The mother later moved out-of-state with no job or other reason to go there, and concealed her whereabouts from the father in an effort to frustrate his visitation rights. (*Id.* at pp. 294-295.) The Court of Appeal concluded the trial court erred in denying the father's request to change the custody order without considering the mother's interference with the father's visitation rights. (*Id.* at p. 295.)

In contrast to *Ciganovich*, the trial court here considered that Polina had denied Arthur visitation since the issuance of the April 30, 2015 order. However, it also considered that Polina relied on her erroneous belief that the April 30, 2015 order,

suspending Arthur's visitation rights, remained in effect. The trial court found there was "no indication from [the parties'] papers that anything ha[d] changed sufficiently, that the best interest[] of the child which was assessed at the time of trial is any different."

The trial court also considered Arthur's argument that a change in custody was warranted by Alexander's declining grades in school, but found the unofficial school records submitted by the parties were not admissible evidence of Alexander's grades. Similarly, the trial court considered Arthur's argument that Alexander was not participating in sports outside of school, but found that even if this was true (arguably supported by one text from Alexander), this would not mean it was "no longer in his best interest[] to continue with the custody arrangement as ordered by the judgment." We conclude the trial court did not abuse its discretion in finding Arthur had not met his burden to show "'some significant change in circumstances indicates that a different arrangement would be in [Alexander's] best interest.'" (*Montenegro*, *supra*, 26 Cal.4th at p. 256.)[9]

---

[9] Arthur also contends the trial court failed to issue a statement of decision pursuant to section 3082. Section 3082 provides, "When a request for joint custody is granted or denied, the court, upon the request of any party, shall state in its decision the reasons for granting or denying the request." This requirement in section 3082 that a trial court prepare a statement of reasons is different from the requirement in Code of Civil Procedure section 632 for a statement of decision. "We believe that the Legislature intended a statement of reasons to be something different in content and purpose than a statement of decision. The statement of reasons was not intended to set forth the legal basis for the decision, but to provide parents with the reasons—in plain, everyday English—why the court granted or

DISPOSITION

The order is affirmed. Arthur is to bear his own costs on appeal.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

ZELON, J.

---

denied joint custody. In contrast, a statement of decision is a formal legal document containing the factual and legal basis for the court's decision on each principal controverted issue for which a statement is requested." (*In re Marriage of Buser* (1987) 190 Cal.App.3d 639, 642.) The trial court here provided its "plain, everyday English" reasoning in denying Arthur's request for modification of the custody order, in compliance with section 3082. Arthur's reliance on section 3654 is also misplaced. This section provides, "At the request of either party, an order modifying, terminating, or setting aside a support order shall include a statement of decision." The March 15, 2017 order did not modify, terminate, or set aside a support order, so no statement of decision was required under section 3654.